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Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 7 July 2004 (S/2004/557). The Counter-Terrorism Committee has received the attached fourth report from Malta submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-31716 (E) 250505

Annex

Note verbale dated 18 April 2005 from the Permanent Mission of Malta to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Malta to the United Nations presents its compliments to the Counter-Terrorism Committee (CTC) established pursuant to Security Council resolution 1373 (2001) and has the honour to enclose herewith Malta's fourth report on implementation of Security Council resolution 1373 (2001) (see enclosure).

Enclosure*

Implementation of Security Council resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of the financial system

1.1. *Regarding the suppression of the financing of terrorist acts under the effective implementation of sub-paragraph 1 (a) of the Resolution, the Counter-Terrorism Committee would appreciate learning whether the Financial Intelligence Unit (FIU) of Malta is adequately structured, empowered and staffed (financially and technically) to enable it to carry out its mandate. Please provide data in support of your response to the above question.*

The Financial Intelligence Analysis Unit (FIAU), a Government agency established under the Prevention of Money Laundering Act, 1994 (Chapter 373 of the Laws of Malta - Annex A) as amended by Act XXXI of 2001, is legally empowered to receive, analyse and disseminate as required financial information on suspicious transactions and to oversee the anti-money laundering regime to ensure compliance and adherence to international standards and practices. The FIAU is thus structured to carry out its mandate under the Act, which currently includes primarily anti-money laundering (AML) issues, and, within certain limits, the financing of terrorism. Amendments to the Act and other Laws are required so that the FIAU would enhance its powers to combat the financing of terrorism (CFT).

The FIAU, which became fully operational in October 2002, is composed of a Board of Governors (four persons with expertise in law, financial legislation and law enforcement) and four full time employees - a Director, two financial analysts and a support officer. In terms of the provisions of the Act, the FIAU is also assisted through a designated Police Liaison Officer who, although still within the Police Force, provides the necessary liaison between law enforcement and the Unit. The FIAU draws its own annual budget meant to cover the necessary expenses and is funded through the Ministry of Finance.

The Unit has presented a 2-year Development Plan to the Minister of Finance. The FIAU was expected to increase its staff in the short and medium term in order to be able to fulfil all its responsibilities within the provisions of the Act, in particular those relating to compliance. The increase in staff under the implementation of the 2-year Development Plan depends on the extent of funding from the Ministry of Finance. Currently the Unit has in place arrangements with the financial services regulator who, as provided for in the Act, acts as the agent of the FIAU in undertaking compliance visits to the obliged institutions and reports accordingly to the Unit.

Moreover, the FIAU has certain international commitments in view of the fact that it is designated by the Act as the authority responsible to ensure that the country has adequate AML/CFT procedures in place to satisfy assessments conducted by international organisation such as the Council of Europe, the World Bank and the IMF amongst others. It is the authority representing Malta on the EU Money Laundering Contact Committee and is a full member of the Egmont Group, the international organisation of FIUs recognised by the above international organisations as the authority on FIUs.

* Annexes are on file with the Secretariat and are available for consultation.

1.2. *In the context of the effective implementation of the Resolution has Malta provided its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:*

Typologies and trends to counter terrorist financing methods and techniques?

Techniques for tracing property, which represents the proceeds of crime or which is to be used to finance terrorism, with a view to ensuring that such property is frozen, seized or confiscated?

One of the main responsibilities of the FIAU is to provide adequate training to obliged persons and other personnel involved in the fight against money laundering and, to an extent, the financing of terrorism. Training and public awareness are indeed on the top priority of the agenda of the FIAU. Since its inception the Unit has in fact been providing such training, either on its own initiative but mostly by participating in organised training sessions.

As far as terrorism financing is concerned, a Maltese officer from within the Money Laundering Unit within the Malta Police Force attended training in Paris in December 2003 which dealt with typologies and trends used in the financing of terrorism. This seminar was also supplemented by another course held by Europol, which dealt with tracing techniques used in the confiscation of assets generated by crime and terrorism.

At the level of investigation, the Money Laundering Unit within the Economics Crimes Unit of the Malta Police Force has never been approached to assist in any investigation to trace assets believed to belong to terrorist organisations. Thus, Maltese police officers lack the necessary experience in this regard.

Effectiveness of counter-terrorism machinery

1.3. *Effective implementation of paragraph 2 of the Resolution requires each Member State, inter alia, to have in place effective police, intelligence and or/ other structures, as well as adequate legal provisions to detect, monitor and apprehend those involved in terrorist activities and those supporting terrorist activities, with a view to ensuring that such persons are brought to justice. The CTC would appreciate learning how the work of the various agencies charged with enforcement of the Resolution is coordinated in practice.*

The Malta Police Force, Malta Security Service, Attorney General, Armed Forces of Malta, Malta Customs and the Financial Intelligence Analysis Unit are involved in anti-terrorism activities in so far as matters related to cooperation in criminal matters and mutual assistance, criminal investigation, public order, internal security and security at points of entry and exit, smuggling and money laundering are concerned.

These agencies investigate and operate within the framework of several laws, including the National Interest (Enabling Powers) Act (Cap.365 of the Laws of Malta), which transposes Security Council resolutions into Maltese law; the Maltese Criminal Code (Cap.9 of the Laws of Malta), the Prevention of Money Laundering Act (Cap.373 of the Laws of Malta), the Arms Ordinance (Cap.66 of the Laws of Malta), the Explosives Ordinance (Cap.33 of the Laws of Malta), as well as the Telecommunications Act and the Data Protection Act. Malta has also set up a regime for the control of exports of dual use items and military equipment, as well as for the control of related technology. The Dual Use Items (Export Control) Regulations of 2004 and the Military Equipment (Export Control) Regulations 2002 are additional legal tools to fight terrorism. Additionally, Malta is a State Party to various conventions dealing with terrorism or related issues.

Extent of internal cooperation between relevant authorities

Malta being such a small country, makes it possible that middle and top-level tiers of each agency work regularly together on many issues. Therefore, friendly, rather than formal, cooperation is the norm.

The Malta Police Force has an International Relations Unit, which incorporates the Interpol National Central Bureau, a Europol National Unit, as well as the future SIRENE and Schengen bureau. Matters of international cooperation such as letters of request, exchange of information and terrorism issues are tackled by this Unit, which is part of the Police Special Branch. The Special Branch is also responsible for border control and other immigration related issues and therefore serves as a strong backup in the prevention and suppression of terrorist activities.

Liaison is also made with the International Cooperation in Criminal Matters Division within the Attorney General's Chambers, as well as specialised police departments for tactical or investigative support.

The Malta Police is mandated to investigate terrorist offences once the matter is within its jurisdiction. Administrative and cooperation issues determine which police department becomes involved in the investigation, and when this is done prior action is taken to see whether there are particular issues, such as money laundering or international cooperation involved.

For the purpose of investigations different police branches may be involved during investigations. The Criminal Investigations Department will investigate general serious crimes. If the investigation turns up a money laundering / economic crime link, the Economic Crimes Unit will merge their expertise into the investigation.

The same procedure is used for investigations that would require the intervention of the Drugs Squad, Immigration Department, Vice Squad, and the Forensic Science Laboratory. The Police Cyber Crime Unit may also be involved if necessary.

The International Relations Unit is the channel through which all foreign parties are contacted for assistance or feedback. Officers of this Section are available twenty-four hours a day and seven days a week.

For the purpose of repression, a police tactical approach would see the Special Assignment Group being deployed. The involvement of the Police Special Branch, the Criminal Investigations Department, and the Police Mobile Squad cannot be ruled out. Depending on the type of anti-terrorist operation in progress, the Armed Forces of Malta may also be involved to provide logistical or tactical support. Obviously this also depends on their jurisdiction.

Given that these are field operations, the Commissioner of Police being the highest-ranking Malta Police Officer will take overall charge of the operations and due to the seriousness of the case, he would report regularly to higher authorities. Close liaison will obviously be ensured with the Armed Forces of Malta.

In so far as prosecution is concerned, the police investigating officers themselves would prosecute during the committal proceedings of a case evolving from a terrorist investigation. The severity of the crime would determine whether the case would end up as a trial by jury or heard in a Court of Criminal Judicature. For the latter to occur, the consent of both the Attorney General and the accused would also be required. This would result in the case being heard before the court that would have previously compiled the evidence against the

accused, with the Police as prosecutors. In a trial by jury, the case would be prosecuted by the Attorney General.

The role of the Armed Forces of Malta (AFM) and the Customs Department in policing their area of competency must also be mentioned. The AFM are responsible for Malta's airspace and maritime area and also the airside of the local International airport. They work in very close liaison with the Police. The Customs Department operates at the Malta Freeport, Grand Harbour and Marinas and the Malta International Airport.

The Malta Security Service has designated a unit that deals with terrorism, and the head of this unit also serves as a contact point for other Maltese agencies. The Malta Security Service is an intelligence agency, mandated by the Security Service Act, Chapter 391 of the Laws of Malta, to fight terrorism.

Economic crime investigations may be headed either by the Police or by Customs, depending on a host of factors. The Financial Intelligence Analysis Unit frequently initiates operations, drawing on the support of the relevant police department or the Security Service. Legislation aimed at freezing of assets suspected of originating from money laundering linked to the financing of terrorism is also in place.

Malta is also very active with regards to international cooperation which also covers acts of terrorism. It is represented in the following organizations:

- Organisation for Security and Cooperation in Europe (OSCE)
- United Nations
- Interpol
- Europol (as of October 2004)
- Police Working Group on Terrorism (PWGT)
- Council of Europe
- EU Council Working Group on Terrorism (COTER)
- Euromed
- Although not a member of the Financial Action Task Force (FATF), Maltese Anti-Money Laundering Legislation has been modeled on FATF recommendations.

- Malta has also acceded to several international multilateral and bilateral conventions, and implemented certain framework decisions. The most recent include those related to the European Arrest Warrant and Join Investigation Teams.

Inter-agency co-operation exists between a number of institutions, particularly between the financial supervisory authorities and specific units in the Malta Police Force, in order to effectively implement the laws and regulations which are seen as contributing to compliance with resolution 1373 (2001). The institutions to be considered from the preventive and regulatory aspect are:

- Any of the following entities who in the course of their duties encounter any suspicion of money laundering activities are obliged to report that information to the Financial Intelligence Analysis Unit:-

  a. The Central Bank of Malta (CBM)

  b. The Malta Financial Services Authority (MFSA);

c. The Competent Authority nominated under the Banking Act, the Financial Institutions Act, the Investment Services Act, the Insurance Business Act, the Insurance Brokers and Other Intermediaries Act.;

d. The Registrar of Companies acting under article 193 of the Commercial Partnerships Ordinance and under articles 403 to 423 of the Companies Act.;

e. An inspector appointed under article 30 of the Insurance Business Act;

f. A person appointed under article 20 or article 22 of the Banking Act;

g. A person appointed under article 14 or article 15 of the Financial Institutions Act;

h. A person appointed under article 13 or article 14 of the Investment Services Act

i. The Lotteries and Gaming Authority

j. An inspector appointed under article 17 of the Lotteries and Other Games Act.

- The Malta Financial Services Authority, established by the Malta Financial Services Act, being a body corporate with distinct legal personality responsible for the regulation and supervision of the financial services sector and houses the Company Registry. The MFSA reports to Parliament through the Minister of Finance.

- The Financial Intelligence Analysis Unit (FIAU) was established by Act XXXI of 2001 which amended the Prevention of Money Laundering Act, 1994. The provisions establishing the FIAU came into force on the 1st March, 2002 and the Governing Board was appointed by the Minister of Finance with effect from the same date and became fully operational in October 2002. The FIAU is a government agency having a distinct legal personality reporting to the Minister of Finance and is responsible for the collection, collation, processing and analysis and dissemination of information with a view to combating money laundering. Following the analysis of information, if the FIAU is of the opinion that a reasonable suspicion of money laundering persists, the FIAU is required by law to forward any information on suspicions of money laundering to the Malta Police Force for investigation.

Do the legal provisions in force in Malta authorize its appropriate authorities to share public and non-public information with their domestic and foreign counterparts? If yes, please provide an outline of the applicable legal provisions.

Article 11 (1) of the Prevention of Money Laundering Regulations, 2003 (LN 199 of 2003) (Annex B) provides that where a supervisory authority or any subject person obtains any information, and is of the opinion that the information indicates that any person has or may have been engaged in money laundering, that supervisory authority or subject person has the responsibility to disclose this information supported by the relevant identification documentation, to the Financial Intelligence Analysis Unit. Furthermore the Prevention of Money Laundering Act, allows the FIAU to exchange information with its counterparties and/or foreign supervisory authorities which the FIAU deems to have similar supervisory functions as those supervisory authorities in Malta.

Local law enforcement agencies, the Armed Forces of Malta and the Malta Security Service are fully committed to prevent the commission of terrorist acts. They share intelligence with other foreign services, whether on a bilateral or multilateral basis, on an ongoing basis. Malta has agreed to disseminate any relevant information which in some way may be related to terrorist acts or activities.

During the Regional Liaison Intelligence Officers (RILO) meeting held in Oslo, Norway, in November 2001, it was agreed that all information which is available to Customs and which, in the opinion of the holding officer, may in any way be relative to terrorist acts, be transmitted to the RILO office in the region through the Customs Enforcement Network (CEN) of the World Customs Organization.

Malta has recently signed a co-operation agreement with Europol, which aims to enhance exchange of operational information. Customs information networks, including the Maltese Customs Administration, have been placed at the disposal of Anti Terrorist Units worldwide.

Effectiveness of customs, immigration and border control

1.4. *Effective implementation of paragraphs 1 and 2 of the Resolution requires effective customs and border controls inter alia to prevent and suppress the financing of terrorist activities. Does Malta impose controls on the cross-border movement of cash, negotiable instruments as well as precious stones and metals (for example, by imposing an obligation to make a declaration or to obtain prior authorisation before any such movement takes place)? Please also provide information concerning any relevant monetary or financial thresholds.*

Customs play an important role in preventing and suppressing the financing of terrorist acts as it controls outgoing and incoming cash carried by departing and arriving passengers. Suspicious movements of considerable amounts of cash are reported to the Maltese Security Service when it is incoming. Outgoing cash is subject to investigation, and legal action is taken when the transaction is unauthorised. Further scrutiny of customs documents seeks to ensure that any attempt of money laundering, which could be used as a means of financing terrorist activity, is detected and enforcement action taken. Legal Notice 463 of 2004 (Annex C) on the reporting of Cash Movements Regulations, which came into force on the 1st January, 2005, imposes a declaration regime on any natural person entering or leaving the Maltese borders and carrying cash or other negotiable instruments equivalent to Lm 5,000 or more, which declaration has to be submitted to Customs for onward transmission to the FIAU. The Regulations also provide for penalties and the seizing of undeclared cash or other negotiable instruments.

Usually immediate action of control is taken if articles are found to be in excess of normal quantities. An explanation is required from the person/s involved in order to ascertain that the importation is in line with regulations. Rough diamonds are regulated by the Kimberley Process and the EU procedure for their movement applies.

1.5. *Please outline the legal provisions and other procedures in place that govern the acquisition of Maltese citizenship and passport.*

When Malta became an Independent State on the 21st September, 1964, the Independence Constitution established who should become a citizen of Malta automatically by birth and who could be registered as a citizen of Malta. Acquisition of Maltese citizenship by registration means that a person has the right to acquire citizenship upon application under the provisions of the said Constitution.

As a result of the changes in the citizenship laws which took place in the year 2000, as from 10th February 2000 the relative provisions are now to be found in the Maltese Citizenship Act (Cap. 188) (Annex D).

The Maltese Citizenship Act, which complemented the provisions made under the Constitution, established who could become a citizen of Malta by naturalisation, that is, who, having satisfied the relative conditions of the said Act, could be granted Maltese citizenship.

When Malta became an independent State it was decided that Maltese citizens should possess only the citizenship of Malta. Those adults who then possessed another citizenship had to renounce it before the 21 September 1967. Citizens of Malta who acquired another citizenship by a voluntary act lost their Maltese citizenship automatically. Minors who possessed another or other citizenships had to decide which citizenship to retain between their 18th and 19th birthday and those who failed to renounce their foreign citizenship ceased to be citizens of Malta automatically on their 19th birthday.

Dual citizenship was introduced in Maltese citizenship legislation with effect from 1st August 1989. This, however, was limited to Maltese emigrants and the persons concerned had to be born in Malta, emigrated to another country of which they became citizens and spent at least six years emigrated in that country.

Important changes to the said legislation were, however, made in the year 2000. Dual or multiple citizenship has now become the rule rather than the exception it was under the 1989 legislation. A citizen of Malta, as from 10th February 2000, can acquire and retain a foreign citizenship (or citizenships) together with his/her Maltese citizenship.

Any enquiries on Citizenship matters may be addressed to:

The Director
Department for Citizenship and Expatriate Affairs
3, Castille Place
Valletta. CMR02.
Tel. No. (+356) 21 25 08 68 / 21 25 05 69 – 21 25 05 73
Fax No. (+356) 21 23 75 13
E-mail: citizenship@gov.mt

Issuance of Maltese Passport

The issuance of passports is regulated under the Passport Regulations (Legal Notice No. 131 of 1993 as amended by Legal Notice No. 59 of 2001) (Annex E). Passports may be issued to citizens of Malta or other Commonwealth citizens on application to the passport officer. Up to the age of 18 the written consent of the parents is required.

1.6. *The CTC is aware that Malta may have covered some or all the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Malta's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.*

Reports submitted to other organisations attached as Annexes F – I. Furthermore it is worth noting that Malta is making all the necessary efforts to adhere to international best practices, codes and standards which are relevant to the implementation of resolution 1373. The answers to this questionnaire as well as the answers to the attached reports are good evidence of this.

2 Assistance and guidance

2.1 The CTC wishes to emphasise once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of the Resolution

2.2 The CTC's directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The CTC would appreciate receiving information from Malta concerning areas where it might be in a position to provide assistance to other States in relation to the implementation of the Resolution.

Malta for the time being is not in a position to provide such assistance.